



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 23, 2004

Mr. John T. Patterson  
Assistant City Attorney  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2004-9966

Dear Mr. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213415.

The Waco Police Department (the "department") received five requests from the same requestor for (1) any police report listing a named former department officer as a suspect, (2) any documents relating to an internal or administrative investigation of the named officer, (3) any documents relating to the named officer's resignation, (4) the named officer's personnel record, and (5) the public portion of the named officer's personnel record. You state that you are releasing some responsive information. You claim that other portions of the requested information are excepted from disclosure under sections 552.101, 552.108, 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of representative samples.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. *See* Gov't Code § 552.101. For information to be protected from public disclosure by the common-law right of privacy under

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Further, where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor's first request asks for any records in which a named individual is listed as a suspect. We believe that this individual's right to privacy has been implicated. Thus, to the extent the department maintains records where the named individual is a possible suspect, arrestee, or defendant, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code and the privacy concerns expressed in *Reporters Committee*.

Section 552.101 also encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. You state that the city of Waco is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.*

Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *id.* §§ 143.051–.055. Such records are subject to release under chapter 552 of the Government Code. See *id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged

misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the information submitted as Exhibits 4 and 6 is maintained in the police department's personnel file for the department's own use pursuant to section 143.089(g) and that the information is not in the Civil Service Director's file. Based upon your representations and our review of the information, we conclude that Exhibit 4 (which includes Exhibit B) and Exhibit 6 are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.<sup>2</sup>

We now turn to your remaining arguments for the information submitted as Exhibits 5 and 7. These documents include an Employment Eligibility Verification, Form I-9. Section 1324a of title 8 of the United States Code provides that a Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the submitted Form I-9 in response to this request for information would be "for purposes other than for enforcement" of the referenced federal statutes. A Form I-9 may be released only for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the department must withhold the submitted Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home addresses and telephone numbers, personal pager and cellular telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer made an election under section 552.024 for the confidentiality of such information.<sup>3</sup> Thus, pursuant to section 552.117(a)(2), the department must withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of any individual who is a licensed peace officer. We have marked the information that must be withheld under section 552.117(a)(2).

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<sup>2</sup>Because our ruling is dispositive, we need not address any of the department's remaining arguments for this information.

<sup>3</sup>"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

Section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.

In summary, we conclude that to the extent the department maintains any records in which the named department officer is listed as a suspect, the department must withhold such records under section 552.101 in conjunction with common-law privacy and the holding in *Reporters Committee*. The department must withhold Exhibits 4 and 6 under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The department must withhold the submitted Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code and the information we have marked under sections 552.117 and 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

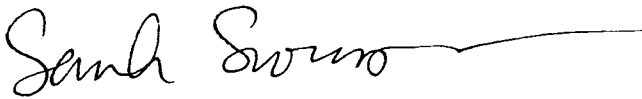
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", followed by a long horizontal flourish line.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 213415

Enc. Submitted documents

c: Mr. Peter Walker  
Waco Tribune-Herald  
900 Franklin Avenue  
Waco, Texas 76701  
(w/o enclosures)